

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 30 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANGALBHAI J PATEL

Versus

DIRECTOR, HEALTH & FAMILY WELFARE CENTRE

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Appearance:

LD. COUNSEL MR. B.P. DALAL WITH MR RAJENDRA PATEL  
for Appellant.

LD. GOVT. COUNSEL MR. H.D.CHUDASMA for ReS. No.1 & 5

LD. COUNSEL MR KG VAKHARIA for Respondent No. 2 & 3

RESPONDENT NO.4 SERVED.

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 09/10/97

ORAL JUDGEMENT

This Appeal From Order has been directed against the orders pronounced by the Ld. Civil Judge (S.D.) Himatnagar in Civil Misc. Application No. 22 of 1988 dated 13th June 1988, under which the application of the

appellant for the permission to sue as an indigent person under the provisions contained in Order 33 C.P.C. came to be rejected.

The Appellant in the capacity of plaintiff had presented the suit against the Respondents for damages in sum of Rs. 2-00 lacs. In the application under Order 33 C.P.C. the case of the applicant was that, he is an indigent person and that, he has not possessed of the sufficient means to pay the Court Fees prescribed under the relevant law. The evidence before the Court was in form of an annexure or a schedule annexed to the application, saying that, the applicant has agricultural lands admeasuring 5 bighas situated at village Ghadkan under the Sabarkantha district of the State of Gujarat. The Court below has accepted this version and has said that the appellant had failed to disclose his income from this land and that, therefore the Ld. Judge was required to travel in the arena of guess work and upon that exercise being done, on the presumption that village Ghadkan has got rich agricultural lands, the Ld. Judge has taken the view that, the appellant was not able to establish that he is an indigent person.

It should be pointed out that the only evidence before the Court was that, the appellant was having 5 bighas of agricultural land at village Ghadkan. There was absolutely no evidence regarding the income from the above said piece of land. The income could have been assessed only after ascertaining the crop which the appellant was taking, his annual yield from the agricultural land and the income there from. This has not been done and the Court has acting upon a presumption or working under a guess work, has come to the conclusion that the application was liable to be rejected.

In this circumstances the only option for this Court is to remand the matter to the Court below, so that a fresh inquiry as envisaged under the provisions contained under Sec. 35 C.P.C. could be held, and a correct decision in this respect can be taken. Present Appeal From Order therefore requires to be partly allowed and the same is hereby partly allowed. The matter is retransmitted to the Court below to decide the same afresh, after affording a reasonable opportunity of being heard to the parties, keeping in mind the above said observations. I order accordingly. No costs.

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/vgn.

